

TO: Mail Stop 8 Director of the U.S. Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK
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In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court _____ Eastern District of Missouri Eastern Division _____ on the following

☐ Trademarks or ☒ Patents . ☐ the patent action involves 35 U.S.C. § 292.):

DOCKET NO. 4:12cv01526 FRB	DATE FILED 08/27/2012	U.S. DISTRICT COURT Eastern District of Missouri Eastern Division
PLAINTIFF Newco Enterprises, Inc.		DEFENDANT Holiday House Distributing, Inc.
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 7,954,666		Please see attached Complaint.
2		
3		
4		
5		

In the above—entitled case, the following patent(s)/ trademark(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading		
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK	
1			
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In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT

CLERK	(BY) DEPUTY CLERK	DATE
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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

NEWCO ENTERPRISES, INC.,)	
a Missouri corporation,)	
)	
Plaintiff,)	Civil Action: 4:12-cv-1526
v.)	
)	
HOLIDAY HOUSE DISTRIBUTING, INC.,)	<u>JURY TRIAL DEMANDED</u>
a Florida corporation,)	
)	
Defendant.)	

COMPLAINT

COMES NOW Plaintiff NEWCO ENTERPRISES, INC. ("Newco"), by and through its counsel, and for its Complaint against Defendant HOLIDAY HOUSE DISTRIBUTING, INC. ("Holiday House"), and states as follows:

JURISDICTION AND VENUE

1. This is an action for patent infringement and unfair competition under Title 35 of the United States Code and state common law. This Court has jurisdiction under 28 U.S.C. § 1331 in that this cause of action pertains to patent infringement, exclusive jurisdiction of which resides in the Federal Court. Jurisdiction of the related claim is proper pursuant to 28 U.S.C. § 1338 in that said claim is substantial and related to the claim alleging patent infringement. Jurisdiction over the related claims is also proper pursuant to the doctrine of pendent jurisdiction.

2. This Court has personal jurisdiction over Defendant Holiday House because upon information and belief, Holiday House markets, advertises, offers for sale, and sells its products in this District and in the State of Missouri.

3. Venue is proper in this Court by virtue of 28 U.S.C. §§ 1391(b) and (c).

THE PARTIES

4. Newco is a corporation organized and existing under the laws of the State of Missouri, with its principal place of business located at 3650 New Town Boulevard, St. Charles, Missouri 63301. Newco manufactures, markets, advertises, offers for sale, and sells in this District and throughout the United States commercial coffee and tea brewers, coffee makers, coffee equipment, and related accessories such as airpots, dispensers, and thermal and glass lined servers for the office coffee supply (“OCS”) industry.

5. Newco is the owner, by virtue of assignment, of the entire right, title and interest in and to United States Patent No. 7,954,666 B2, entitled “Airpot and Dispenser Liquid Level Float”, which was issued on June 7, 2011 and invented by Joseph P. Webster and Dahyabhai Patel (hereinafter referred to as “the ‘666 Patent.”) A true and accurate copy of the ‘666 Patent is attached hereto as Exhibit 1.

6. Newco manufactures, markets, advertises, offers for sale, and sells in this District and throughout the United States a “KK Sight Gauge Airpot such as is depicted in Exhibit 2. The KK Sight Gauge Airport is based on the ‘666 Patent.

7. Upon information and belief, Holiday House is a corporation organized and existing under the laws of the State of Florida, with its principal place of business at 5528 Land O’ Lakes Blvd., Land O’ Lakes, Florida 34639.

8. Upon information and belief, Holiday House manufactures, or has manufactured for it, markets, advertises, offers for sale, and sells in this District and throughout the United States OCS accessories, including but not limited to, airpots for the delivery of coffee and other beverages.

9. Upon information and belief, Holiday House is a direct competitor to Newco in the sale of OCS accessories.

10. Upon information and belief, Holiday House has been manufacturing or having manufactured for it, using, advertising, offering for sale and/or selling in this District and throughout the United States a sight glass airpot such as is depicted in Exhibit 3.

COUNT I
INFRINGEMENT OF U.S. PATENT 7,954,666 B2

11. The allegations of paragraphs 1-10 are repeated and re-alleged as if set forth fully herein.

12. Upon information and belief, Holiday House has been manufacturing or having manufactured for it, using, advertising, offering for sale and/or selling in this District and throughout the United States sight glass airpots such as are depicted in Exhibit 3.

13. Upon information and belief, Holiday House has manufactured, or had manufactured for it, used, advertised, offered for sale and/or sold in this District and throughout the United States such sight glass airpots, all of which infringe one or more claims of the '666 Patent.

14. By the above actions, Holiday House has infringed, and/or induced the infringement of, and/or has contributorily infringed the '666 Patent in this District, and elsewhere, all in violation of 35 U.S.C. § 271, and Holiday House will continue to infringe the '666 Patent unless enjoined by this Court.

15. The infringement by Holiday House has been willful and deliberate.

16. Newco has provided Holiday House with actual notice of its infringement of the '666 Patent.

17. Newco has been damaged as a result of infringing activities of Holiday House and will continue to be damaged and irreparably harmed unless this Court enjoins such activities.

WHEREFORE, Newco respectfully prays this Court to enter its judgment in favor of Newco and against Holiday House as follows:

A. That Defendant Holiday House, its subsidiaries, officers, agents, servants, affiliates, employees, attorneys and representatives and all those in privy or acting in concert with Defendant be permanently enjoined and restrained from infringing, inducing infringement, and/or contributing to the infringement of the '666 Patent in accordance with 35 U.S.C. § 283;

B. That this Court enter judgment against Defendant for damages resulting from Defendant's infringement, inducement of infringement, and/or contributory infringement of the '666 Patent in accordance with 35 U.S.C. § 284, and that these damages be trebled in accordance with 35 U.S.C. § 284;

C. That this Court award Plaintiff its reasonable attorneys' fees in accordance with 35 U.S.C. § 285;

D. That this Court award Plaintiff interest and costs in accordance with 35 U.S.C. § 284; and

E. That this Court award Plaintiff such other and further relief as this Court deems just and equitable under the circumstances.

COUNT II
COMMON LAW UNFAIR COMPETITION

18. The allegations in paragraphs 1-10 are repeated and re-alleged as if set forth fully herein.

19. This Count is for common law unfair competition under the laws of the State of Missouri.

20. Holiday House's copying of the design depicted in the '666 Patent and the KK Sight Gauge Airpot, and its marketing, advertising, offering for sale, and selling of sight glass airpots, such as are depicted in Exhibit 3, constitutes unfair competition under the common law.

21. As a direct and proximate result of the wrongful conduct of Holiday House, Newco has and will sustain substantial injury, loss and damage to its business and reputation in an amount to be proven at trial.

22. Newco is also entitled to injunctive relief because no damage award can adequately remedy it for the damage it has and will suffer as a result of Defendant's conduct. Newco will be irreparably injured in its business unless Defendant's violations are enjoined.

WHEREFORE, Newco respectfully prays this Court to enter its judgment in favor of Newco and against Holiday House as follows:

(a) For a permanent injunction against Holiday House enjoining it and its respective officers, directors, agents, employees, subsidiaries, parents, divisions, representatives and all those who have acted in concert with it in the manufacturing, marketing, distribution or sale of the infringing products and from continuing any such act of infringement;

(b) For an accounting of all monies received by Holiday House as a result of their infringement and the sale of their infringing products;

(c) For an award of monetary damages against Holiday House as and for Newco's loss of profits, business and other expenses and losses, which amount is presently unknown but is to be determined at trial, and which award shall be sufficient to compensate Newco for Defendant's infringement;

(d) For its cost and expenses incurred herein;

(e) For prejudgment and post-judgment interest as may be allowed by law; and

(f) For such other and further legal and equitable relief as this Court deems just and proper to prevent and prohibit any future infringing activities by Holiday House and to compensate Newco for Defendant's infringing activities.

JURY DEMAND

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, and the Seventh Amendment to the Constitution of the United States, Newco demands a jury trial of all issues triable as a right by jury in the above action.

Respectfully Submitted,

HELFREY, NEIERS & JONES, P.C.

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CERTIFICATE OF SERVICE

I hereby certify that on August 27, 2012, I electronically filed the foregoing with the Clerk of the Court for the United States District Court, Eastern District of Missouri by using the CM/ECF system.

/s/ David B. B. Helfrey